



## Explanatory Note

### Extension of time limits due to “COVID-19”

(coronavirus outbreak): time limits affected, nature of extension and communications to users

In order to provide users with further guidance on the [Decision of the President of 24 March](#) extending time limits expiring between 17 March 2020 and 3 May 2020 inclusive in the context of the coronavirus outbreak, the following Explanatory Note has been issued about the time limits affected by the extension, the nature of the extension and the measures to adapt communications sent to users.

#### **I. TIME LIMITS AFFECTED BY THE EXTENSION**

Article 1 of Decision of the President of the Office of 24 March 2020 extends until 4 May all time limits expiring between 17 March and 3 May 2020 inclusive that affect all parties in proceedings before the Office.

Article 71 (2) of the [Proceedings Regulation](#), which empowers the President to determine the duration of the period of interruption or dislocation uses a similar language, by also referring in general terms to ‘a time limit’ and ‘all parties to proceedings’.

The reference to ‘a time limit’ is to be read literally and encompasses all procedural deadlines, irrespective of whether they have been set by the Office or are statutory in nature (i.e. are stipulated directly in the Regulations), **to the exclusion of those time limits referred to under Section II below.**

For the sake of clarity, the expression “time limit” covers:

Time limits set by any instance of the Office, in any proceeding before the CPVO, including its Board of Appeal,

Time limits imposed directly by Council Regulation (EC) No 2100/94 (the [Basic Regulation](#)), Commission Regulation (EC) No 874/2009 (the [Proceedings Regulation](#)), Commission Regulation (EC) 1239/95 (the [Fees Regulation](#)),

And regardless of whether they are excluded from restitutio in integrum within the meaning of Article 80(4) Basic Regulation.

In particular, the following statutory time limits are covered by the extension:

- Payment of the Application Fee (Article 7 Fees Regulation). In particular, Article 7(3), (4), (6) thereof will not apply until 4 May 2020. This means that in case of applications for which the Office has not received the application fee, the Office will not send a new request for payment and the formal date of application shall not be affected.

- Payment of the annual Fee (Article 9 Fees Regulation). The Office will not send reminders for payment of annual fees until 4 May 2020 nor shall the Office launch the related procedure for cancellation of titles with unpaid annual fees during the period to 3 May 2020 inclusive.
- Payment of fees for processing specific requests and fees laid down by the President (Article 10 and 12 Fees Regulation). In particular Article 10.2 Fees Regulation will not apply until 4 May 2020 and the Office will not send a reminder until that date.
- Payment of Appeal fees (Article 11 Fees Regulation). In particular the payment of a third of the appeal fee shall be due after 4 May 2020 and the Office will not send a reminder before that date.
- Right of Priority (Article 52 Basic Regulation).
- Filing of a Notice of Appeal and of the Statement of Grounds (Article 69 Basic Regulation).

## II. TIME LIMITS NOT AFFECTED BY THE EXTENSION

### Technical examinations

Time limits regarding the starting of technical examinations, the submission of plant material for the conduct of technical examinations by Examination Offices and the payment of fees due for arranging and carrying out the technical examination of a variety being the subject of an application for a Community plant variety right ('examination fee', under Article 8 of Commission Regulation 1239/95), are not subject to the extension established under Article 1.1 of the Decision of the President of 24 March 2020.

### Plant material submissions and payment of examination fees

Plant material submissions for the commencement of DUS testing work at examination offices that are due in the course of the coming weeks may be delayed upon request for one year, or if technically feasible, for a short period that allows to conduct the test in the current growing period.

Any such request will have to be provided in writing before the end of the regular plant submission period communicated in the plant submission request sent by the CPVO or published on the CPVO website.

The CPVO will respond to such requests, either by confirming a short delay and defining a new plant submission deadline in the current growing period, or postpone the plant submission to the next growing period.

The examination fee for an application with an agreed one-year postponement will only be due at the time the actual testing work starts.

### Compliance with the novelty requirement

According to Article 10(1)(a) and (b) of the Basic Regulation, the grace periods related to acts of commercialization or of disposal to others of propagating or harvested material for the purposes of exploitation of the variety, by the breeder or with his/her consent, will continue to be calculated by the Office on the basis of the date of application. Therefore, the extension of time limits to 4 May 2020 will not apply to the statutory grace periods established under Article 10 of the Basic Regulation.

### Proceedings before other Authorities

The reference in the Decision to 'proceedings before the Office' means that time limits that relate to proceedings **before other authorities** are not covered by the extension, even if mentioned in the Regulations. This is in particular the case with regard to the time limit for:

- Bringing an action before the General Court against decisions of the Boards of Appeal (Article 73 and 74 of the Basic Regulation).

- Complaints to the European Ombudsman or actions to the Court of Justice of the European Union under Article 33a Basic Regulation against confirmatory decisions taken in proceedings for public access to documents under Regulation No 1049/2001.

### **Time limits related to other subjects**

The expression 'proceedings before the Office' only relates to plant variety rights' matters, which means that time limits related to subjects not dealt with by the Basic Regulation, the Proceedings Regulation of the Fees Regulation (such as employment or procurement and grants) or which relate to other matters (e.g. the governance of the Office) are also not covered by the Decision of the President.

### **III. NATURE OF THE EXTENSION**

The extension of time limits granted by the President of the Office has the immediate effect of preventing the deadlines concerned from lapsing when they were originally due, and of setting a new expiry date applicable to all, namely 4 May 2020.

This effect is automatic and derives directly from the Decision of the President. Accordingly, affected parties are not required to file a request to the Office for the extension of the time limit to take effect.

**Parties to ongoing proceedings are therefore advised not to lodge unnecessary requests for extension.**

It should be noted, however, that in case the parties are in a position to meet either the original or the extended deadline, and choose to discharge their procedural obligations during that period, the procedure will take its usual course and any documents filed will be examined in the regular manner.

### **IV. COMMUNICATIONS SENT TO USERS**

The immediate effect of the extension also implies that users whose time limits are concerned will not be informed about the grant of the extension by means of individual communications.

Therefore, the content of standard communications that the Office will be sent to users during the period of validity of the Decision of the President of 24 March 2020 is without prejudice to the rules established in the mentioned Decision, which will prevail over any other communication to that effect.



**Martin Ekvad**

President of the Community Plant Variety Office

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